
**COMMISSION MEETING
THURSDAY, JUNE 13, 2002
DRAFT MINUTES**

Chair Orr called the meeting to order at 1:30 p.m., at Maple Hall located in LaConner. He welcomed the attendees and introduced members and staff present:

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER JANICE NIEMI;
COMMISSIONER ALAN PARKER;
SENATOR MARGARITA PRENTICE;
SENATOR SHIRLEY WINSLEY;
REPRESENTATIVE ALEX WOOD;
REPRESENTATIVE CHERYL PFLUG; (arrived later)**

OTHERS PRESENT: **RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
DERRY FRIES, Assistant Director, Licensing Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

Chair Orr introduced two Gambling Commission staff members, Special Agent Roger Sauve, from the Bellingham Office, and Special Agent Joe Abrew, from the Lynnwood Office, participants in the agency's Partnership Program.

Chair Orr asked the Commissioners to concur with him in his request to amend the agenda by moving the Chair and Vice Chair elections from Friday's agenda to "Other Business" on Thursday's agenda. He said the request was being made in order to allow all of the Commissioners to participate since Commissioner Parker would be absent on Friday. The Commissioners concurred.

1. DIRECTOR'S REPORT AND REVIEW OF AGENDA:

Director Day reviewed the agenda for Thursday and Friday, noting the only change would be the election of the Chair and Vice Chair positions. Director Day also reviewed the new handout materials inserted in the agenda packets.

Director Day announced that Mark Richart, from Pasco, and Jaime Hopkins, from Yakima, graduated from the State Law Enforcement Academy on May 15. Agent Hopkins received two of the top physical awards. Director Day added that he anticipated bringing employees before the Commission to acknowledge employees for their 5, 10, 15, 20 and 25-year service awards.

Director Day addressed the Bingo rules and noted a slight change of direction in staff's recommendation. At the last meeting, staff discussed the importance of moving slowly and making sure the rules moved forward as a package because of the potential for competitive advantages and the potential for unforeseen mistakes to be made if the process moved too fast. In the interim, staff listened as carefully as possible to the concerns expressed by operators and reviewed the statute changes the Legislature actually made. At this point, staff supports moving the rules forward as a package because it is prudent to get them before the Commission for discussion and filing. Staff recommends the entire package be filed to allow for the various options and to preserve the filing timelines. This allows the Commission to essentially select between the options/amendments, and approve them, if that is appropriate, at the next Commission meeting, and then allow them specifically to be effective in 31-days. It essentially allows the Commissioners to shorten the timeline to react to the expressed business concerns across the state and still keep the rules as a package while making sure everybody has the same opportunity.

A. **Budget Update:** **Director Day** noted that at the last meeting, the Commission asked him to make an appointment with OFM Budget Director, Marty Brown, and appointed a subcommittee made up of Chairman Orr, Commissioner Parker, Senator Prentice and Director Day. They met; however, Director Brown did not attend. The subcommittee conveyed the following messages:

- Emphasized the unique nature of the agency -- being supported entirely by its own revenues, that it was a non-appropriated, sole purpose account;
- There was a reason why the separation was put in place, and it came as a result of issues and concerns about corruption involving gambling. Since the Commission was created in 1973, at least to this point, the state has not had a major scandal involving gambling;
- Emphasized that the Legislature did not grant either itself or OFM the direct authority to change the budget once the Commissioners have approved that budget, and that the Commission, by statute, must approve their expenditures;
- The fund is subject to the Budget and Accounting Act for expenditure and revenue control. Fees are paid in advance. Saving dollars shouldn't mean an excess for other purposes, but in fact, would implicate the need to either refund fees or reduce fees and services because the statute requires the fees be assessed to cover costs of enforcement and regulation under RCW 9.46.
- Identified that the budget now is different from the 1973 budget; 17 percent of the revenue is derived from the tribal funds that did not exist in 1973;
- At this time, gambling in Washington has exceeded \$1 billion in net receipts -- it is on the increase and this is not a good time to interfere or decrease potential regulatory and enforcement activity in the state.

Director Day said they tried to come away with some common understandings, and although they achieved that to some limited degree, staff still has some homework to do. He noted they also discussed the issue of submission of documents requested by OFM, and the agency demonstrated their willingness to follow up and support the budget-development process by supplying the "jump start" documents to explain the agency's operations and activity inventory.

Director Day walked the Commissioners through documents that identified the cause of the concern regarding the Commission and OFM's authority. He directed them to a document dealing with target reductions. Part of the concern with the memorandum from OFM was the section that targeted the Commission for another 1.5 FTE reduction. "The targets represent additional statewide reductions of 400 FTEs and \$1 million in travel and equipment, although legislative, judicial, and higher educations, as well as agencies headed separately by elected officials are not assigned targets." Director Day pointed out that the memo dealt with agencies that were exempted from consideration under this target. The Governor asked that they voluntarily pursue the reductions. In the meeting with OFM, the subcommittee made it clear that these were merely targets. However, the document also state target reductions do not require formal allotment revisions, and it notes that OFM would be monitoring expenditure and hiring data with the expectation that agencies will spend below their authorized dollar and FTE levels by an amount of the target reduction. These are the areas of concern as they relate to the Commission's authority to govern its own budget.

Director Day referred to a succession of documents that address the Activity Inventory Report. The agency had stated that it is a one-purpose agency, essentially that of gambling regulatory, enforcement, and control. The series

of OFM documents directed staff to submit according to a breakdown of certain activities of licensing field operations, investigation and criminal intelligence and tribal gaming, and directed the Commission to split out its budget according to those four activities, its FTEs, and then identify priorities. This level of detail caused additional staff concern and was the reason to get direction from the Commission on how to proceed. Following those meetings and in the interest of cooperation and making sure the Commission's perspective was shared in the Governor's budget documents, and in the information that reaches the Legislature, staff produced a suggested or recommended activity inventory. Staff selected to break down its activities into: 1) licensing background and financial investigations; 2) general enforcement and criminal intelligence investigation; and 3) tribal state compact negotiation regulation, certification and investigation. Director Day asked the Commission to consider approving the proposed document for submission to OFM.

Director Day briefly covered OFM's instructions on what an activity inventory was supposed to include: to describe the major activities of each agency, describe functions or services, activity description, expected results, dollar and FTEs matched to the maintenance level budget submitted, linked with "one" being high priority and "three" being a lower priority. Part of the instructions acknowledge that some agencies don't lend themselves easily to this type of breakout, and should best fit as it can within the intent of the instructions.

Senator Prentice noted that OFM's comments on the autonomy of the Commission amounted to acknowledging there's autonomy, but only up to a certain point. The point OFM made was that an agency couldn't take licensee money and think OFM has no oversight over it. They were trying to draw a rigid line. Subsequent to that meeting, she heard that if the argument was going to be that the agency needs the funds they are collecting now in order to do the job, it needed to be justified. "This is government, and that is how it's done." Senator Prentice believed the Commission has a good argument to make, and she recommended making and justifying it. She affirmed that we may not like the rules; however, they apply to everybody. Senator Prentice addressed the possible reduction of 1.5 FTEs and noted there has already been a big reduction of FTEs in the Commission. When she talked to Director Brown, he acknowledged the Commission could show that within the spirit of what the Governor is attempting to do, we've already anticipated that and our activities already reflect that. Senator Prentice cautioned staff to remember the Governor is extremely sensitive to the accusation that under his administration, FTEs have grown by leaps and bounds and particularly in agencies that he doesn't have direct control over. The Commission therefore needs to justify the FTEs and say we need them for our activities. She believed the public would certainly support the Commission having sufficient staff because they want to keep gambling honest. Senator Prentice encouraged the Commission to provide OFM with what they need. She didn't think they would be in a position to start grabbing money once the Commission made its case as to why the activities are essential. Senator Prentice reported a hearing would be scheduled on this issue later this summer. **Director Day** affirmed the Jump Start Document was designed to respond to OFM to make sure the Commission's information was on record and to show the agency is not being uncooperative. It provided detailed listings and all the trends, Chairman Orr's memo addressed the budget reductions the Commission already made, and then the final piece of getting that information before the official publications was the Activity Inventory Report.

Commissioner Niemi commented that she was in favor of supporting the budget recommendation along with the part that conforms to OFM's request about ranking items and providing explanations. She believed that at the very least another meeting should be scheduled with Marty Brown and with the appropriate House and Senate budget staff. Commissioner Niemi believed that ultimately there should be a request for an Attorney General's opinion. Background information is available, and in fact the Senate Budget Committee asked for similar information in about 1995. They are familiar with this kind of argument over whether it's statutorily required. Director Day affirmed.

Representative Wood asked Director Day if he planned to talk about the idea of a revolving account. **Director Day** affirmed and noted that it has been suggested that it would be beneficial to conduct a hearing because of the apparent loss of institutional memory as to why the Commission was set up with the revolving account. A hearing might be a way to get at that subject and achieve some understanding as to why the revolving account exists.

Commissioner Parker said he supported Commissioner Niemi's proposal that there be a follow-up meeting with the key people from the legislative staff. He noted the meeting on May 31st was with some of Marty Brown's staff, some of the Commissioners and staff, and Senator Prentice. The people who weren't at the table that should be at

the table are the people with the Senate Finance and House Ways and Means Committees. They're the people that advise the Legislature. What the Commission could hope to accomplish in the next meeting is an agreement that what the Legislature did in this past budget exercise is quite questionable. To take monies (\$2 million) that licensees are paying as fees into this agency for the purpose of the cost of regulation and putting it into the treasury is directly in conflict with the purpose for which those monies were collected. **Commissioner Parker** emphasized this bears repeating, and also suggested talking about any future ideas that might be out there in terms of next year's budget. When the Governor's budget was put forward last December, which included taking \$2 million out of what they called the Commission's surplus monies, there was no consultation with this agency. **Director Day** responded there was initial consultation, and the Commission provided a recommendation that there not be any transfer. Initially the transfer was at a \$4 million level and ended up at \$2 million. He affirmed that from that decision point there wasn't any consultation. Commissioner Parker affirmed and restated his point that the Commission needed to protect the agency against any kind of future unilateral action. He concurred the response before the Commission is an appropriate response to be made back to OFM -- it's in faith with what was asked for, and he agreed with Senator Prentice that the Commission should respond if this is just a question of information and making sure information is available. However, he believed the policy issue needed to be addressed of whether this agency is under the direction of OFM in terms of supervision, or whether the Commission is in a relationship where they provide information to OFM so that they can do their job, as the Commission does its job. Commissioner Parker felt that is a key distinction that needs to be clarified. He hoped the follow-up meeting could address those policy issues, and he did not see that as being in conflict with Senator Prentice's offer to also hold a hearing that might bring out more educational information about the Commission.

Senator Prentice emphasized that the arguments that were being made to OFM by the Commission was an endeavor to protect the licensee contributions. She didn't want anyone to think that anyone folded during session, or that they are really going to fold anyway. The committee didn't want OFM to do this, they didn't want to let it happen, and they don't want it happen again -- staff understands the contributions came from the licensees.

Commissioner Parker called attention to a letter from the Squaxin Tribal Gaming Commission to Chair Orr. They addressed the ability of the Commission to be able to in effect take funds that the tribes paid and put those funds into the general treasury. The legal point made in the letter, is that, in effect, means that the state is taxing the tribes. Commissioner Parker emphasized that it is clear under Federal law that the state has no authority to impose a tax on Indian tribes. Before this question could rise to the level of the tribes being able to take legal action, he believed the Commission would have to have depleted almost all but the tribal monies before there is a cause of action. He felt this issue was part of the consideration that the Commission has in front of them. **Director Day** thanked the Commissioners for bearing with staff throughout the discussion about where to go from here. He acknowledged the discussion and concurrence to file the Activity Report, and the interest in a second meeting with Marty Brown and selective legislative staff and representatives. **Chair Orr** affirmed.

Commissioner McLaughlin asked if the representative from the Governor's office who covers gambling attended the May meeting. Director Day said she did not. Commissioner McLaughlin thought that might be an opportunity to have someone from the Governor's Office at the next meeting. **Chair Orr** thought that would be a good idea.

Commissioner Niemi made a motion seconded by **Commissioner McLaughlin** to approve the budget report. *Vote taken; the motion passed unanimously.* **Director Day** verified staff should move forward with the second meeting, and would see what the results are of that, and then evaluate Commissioner Niemi's suggestion about the Attorney General's opinion as they move forward. There was consensus.

- B) Adjusted Cash Flow Report: **Director Day** addressed the updated adjusted cash flow report. Of significance in this case is that none of the licensees are subject to the immediate suspension provision; however, there are four licensees broken out separately, that have been issued a statement of charges for failure to meet the four-quarter average which are adjusted cash flow requirements. That reflects an average, designed in order to accommodate seasonal fluctuation or temporary business problems—whatever might occur in one quarter—to average that out over a four-quarter period. He re-emphasized that this process provides for a statement of charges, then an opportunity for a hearing, and that the agency takes no action to remove the license from these establishments until there's an ALJ recommended decision, and the licensee has had an opportunity to bring that decision before the Commission.

C) Monthly Updates: **Director Day** said there was nothing of significance to report regarding the Administrative Case Update.

D) News Articles: **Director Day** noted there were a few local interest articles inserted in the Commission agenda packet.

2. **New Licenses, Changes, and Tribal Certifications:**

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve the new licenses, changes and tribal certifications listed on pages 1 through 10 of the agenda packet under License Approvals. *Vote taken; the motion carried with five aye votes.*

3. **House Banked Card Room Report:**

East Wenatchee Development, LLC dba/Royal Casino East Wenatchee:

Derry Fries, Assistant Director, reported the Royal Casino East Wenatchee Development, LLC, applied for a license to operate 15 tables of house-banked card games. The applicant was formed as a limited liability company in October 2001. Their headquarters are located in Seattle, Washington. The pre-licensing investigation involved multiple levels of the organization, which is owned 100 percent by the Royal Operations Parent, LLC, who is also owned 100 percent by the Royal Operations Parent, LLC. Mr. Fries explained the various shareholders and ownership percentages. He explained the LLC has no other interest in house-banked card rooms at this time; however, Bob Brennan and James Flood are majority interest holders in The Royal Casino in Everett. Special agents from the agency's Financial Investigations Unit (FIU) conducted a criminal and personal history background investigation on all substantial interest holders and their spouses, and initiated and completed a financial investigation on both the LLC members, the personal memberships in the LLCs and the corporate stockholders. No disqualifying information was found. Special agents completed an onsite preoperational review and evaluation (PORE) in accordance with the rules of the Commission. The applicant was found to be in compliance. Based upon the licensing investigation and the PORE, staff recommends the East Wenatchee Development, LLC, dba/Royal Casino East Wenatchee, be licensed as a house-banked card room authorized to operate up to fifteen tables. Mr. Robert Brennan, LLC Manager, was available for questions.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve licensure for East Wenatchee Development, LLC, dba/Royal Casino East Wenatchee as a house-banked card room authorized to operate up to fifteen tables. *Vote taken; the motion passed with five aye votes.*

Mr. Brennan thanked Agents Brian Lane and Roger Bean for their good work in putting together a difficult project and he thanked Derry Fries for his support.

Vormsberg Company dba/Golden Nugget Casino, Renton:

Derry Fries, Assistant Director, reported Vormsberg Company applied for a license to operate 15 tables of house-banked card games. The applicant was formed as a privately held corporation on October 18, 1994. Their headquarters is located in Renton, Washington. Ownership of the company consists of Timothy Iszley, 90 percent, and Michels Development Company, 10 percent. Mr. Iszley has a majority interest in the following house-banked facilities: Silver Dollar, Tacoma; Silver Dollar, Tukwila, Silver Dollar Sea Tac, Silver Dollar Mountlake Terrace and the Golden Nugget Shoreline.

Special agents from the agency's FIU conducted a criminal and background investigation on all substantial interest holders and initiated and completed a financial investigation on both the company and personal membership finances. There was no disqualifying information found. Special agents completed an onsite PORE in accordance with the rules of the Commission and the applicant was found to be in compliance. Based upon the results of the licensing investigation and the onsite PORE, staff recommends Vormsberg Company, dba/Golden Nugget Casino, be licensed as a house-banked card room and be authorized to operate up to 15 tables at \$25 wager limits. The \$25 wagering limit is recommended because the applicant failed to demonstrate compliance to the requirements for Phase II operation in accordance with the provisions of WAC 230-40-803(5).

Commissioner Parker observed that the enterprise is owned 90 percent by Timothy Iszley who also owns five other house-banked card rooms and verified this would be the sixth enterprise that Mr. Iszley would be operating. **Mr. Fries** affirmed. Commissioner Parker recalled a discussion last year regarding the issue of multiple ownerships. He asked if Mr. Fries envisioned any concerns in terms of that kind of concentration. Mr. Fries replied the company is operating in compliance with agency rules and there are no violations of Commission rules. He said staff would be looking at this subject again and planned to provide another presentation on multiple ownerships early next year. However, at this point, he did not see the state being in control of one individual or multiples by franchise operation. He noted this represents six establishments out of 71 operations throughout the state.

Commissioner Ludwig recalled Mr. Iszley had administrative proceedings involving two or more of the Silver Dollar Casinos—a violation of passing money or “loaning” money back and forth between those casinos. He asked if that would affect this recommendation at all. **Mr. Fries** affirmed Commissioner Ludwig’s recollection but added that there was a settlement, and that does not affect his license status. **Commissioner McLaughlin** asked if the fine had been completely paid. **Bob Berg**, Deputy Director explained an agreement has been entered into as a result of the settlement in lieu of charges, or an agreed order -- arrangements have been made by the licensee to pay the penalties assessed by the Commission. Not all of the money has been received, but it is on a payment schedule. Mr. Berg noted that according to Commission rules, there are no pending charges against this licensee because the charges have been settled, even though money is still owed.

Tim Iszley, of the Golden Nugget, Tukwila, introduced himself and said he was open for questions. **Commissioner Ludwig** asked why this casino was not a Silver Dollar facility. Mr. Iszley said it was purchased as the Golden Nugget and they left the name because it had all the Golden Nugget paraphernalia in there. **Senator Prentice** commented that the Golden Nugget is in her district and she has visited the facility. She affirmed the Golden Nugget and Silver Dollar have been located next to each other and across from the Riverside for years. They have their separate identities even if they’re right next to each other. Tukwila appears to be keeping with their basic philosophy—the gaming facilities are in the corridor on Interurban.

Commissioner Ludwig asked if any of the Silver Dollar casinos loan money to the Golden Nugget. **Mr. Iszley** said no. Commissioner Ludwig observed that he owned 90 percent of Vormsberg, and asked if he put up all of the money to buy the Golden Nugget out of his own pocket. Mr. Iszley responded that he got a loan from Feston Mortgage.

Commissioner McLaughlin asked when the fine would be paid. Mr. Iszley said it was on a six-month payment schedule, and they are two months into it.

Commissioner Niemi made a motion to approve Vormsberg Company; however, just after seconding the motion, **Commissioner McLaughlin** paused to make sure that she understood that the Commission couldn’t use the unpaid fine as a reason for denial of this license. **Jerry Ackerman**, Assistant Attorney General, responded that the Commission has broad general powers to do things that comport with public policy in the area of gambling. It is a power that is seldom used and should be used quite judiciously because it is undefined. However, in terms of using the pending charges as criteria for denying the license, which the Commission does routinely consider where it applies, he believed Mr. Fries correctly stated the way that WAC has been interpreted by this Commission in the past, which is, the charges are no longer pending because they have been settled. If a payment was missed or there was some other indication of a violation of the settlement agreement, then that would be a different question.

Commissioner Niemi made a motion seconded by **Commissioner McLaughlin** to approve Vormsberg Company, dba/Golden Nugget Casino, to be licensed as a house-banked card room authorized to operate up to 15 tables at \$25 wager limits. *Vote taken; the motion passed with four aye votes. Commissioner Ludwig voted “no.”*

Mr. Fries provided an up-to-date status of house-banked facilities -- currently there are 73 house-banked public card rooms, and 11 pending. There were no questions.

4. Phase II Review:

Celebrities Casino, Kennewick:

Cally Cass-Healy, Assistant Director, reported that Celebrities Casino is a commercial bowling center, restaurant and card room located in Kennewick. The business is owned by Leo and Barbara Frank with 75 percent interest and Mark

Frank with 25 percent interest. The first day of house-banked operations was December 10, 2001. They are currently operating 12 house-banked tables consisting of one Lucky Ladies game, one Three-Card Poker, three Spanish 21, one Match-the Dealer Blackjack, two Pai Gow Poker, one Double-Deck Blackjack, and three regular Blackjack games.

Special agents conducted a thorough investigation including a review and observation of their five key operating departments. Those include gaming operations, cashier cage and count room, security, surveillance, and the accounting department. No material violations of these operating procedures were noted. They also reviewed the gaming and organizational records. A sample of gaming and other records were reviewed to ensure record keeping requirements were being followed, the licensee's internal controls were in compliance, and no hidden ownership or unreported third party financing existed.

The City of Kennewick was contacted confirming the licensee is current with all local card room taxes. Kennewick Police Department was also contacted; the department has not experienced a significant impact from the operational Celebrities Casino. No material violations were noted during this review. Based on staff's review, it is recommended that the Celebrities Casino be approved to operate at Phase II wagering limits.

Commissioner Ludwig clarified that he didn't vote initially to approve this license because he did not like the location and the Commission granted the license, which, was the right thing to do. He also noted in the report and recommendation that staff at the Celebrities Casino were extremely cooperative and helpful, and there were no violations.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to approve Celebrities Casino located in Kennewick to operate at Phase II wagering limits. *Vote taken; the motion passed with five aye votes.*

5. Default Hearing:

Niko's Place, Mercer Island:

Amy Patjens, Manager, Communications and Legal Department, requested a default order be entered for Niko's Place. This is a licensee with a Pull-tab license that failed to submit their Quarterly Activity Report (QAR) for punchboard/pull tab activity within 30-days following the quarter ending December 31, 2001. The licensee must submit these reports each quarter. They contain basic information about revenues, expenses, pull-tab games sold, and et cetera. The agency uses these reports to determine what is happening in the gambling industry, and the information is also used by several local jurisdictions to determine how much taxes are due.

Charges were issued, and staff made numerous attempts to get the reports by making phone calls, and sending letters. The charges were served to owner, Rudopi Andrews, by certified mail, but signed by someone else, which is common. When staff called the owner, the person they spoke to said the owner was aware of them. By not responding to the charges, the licensee has waived their right to a hearing. Staff is requesting a default order be entered revoking the pull-tab license. Staff realizes this is a harsh penalty, but there aren't any other options since the agency still hasn't received the reports.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to revoke Niko's Place license to conduct gambling activities. *Vote taken; the motion passed with five aye votes.*

6. Other Business/General Discussion/Comments from the Public:

Chair Orr called for nominations for the position of Chair and Vice Chair for 2002-2003. **Commissioner Ludwig** pointed out that sometimes the Vice Chair is nominated to move up to the Chair's position. He declined the opportunity to move up to the Chair position. **Commissioner Ludwig** nominated and **Commissioner McLaughlin** seconded the nomination of **Chair Orr** to a second term as Chair. **Chair Orr** called for other nominations for the Chair position. There were none and the nominations were closed. **Commissioner Ludwig** called for the vote. *Vote taken; Chair Orr was unanimously elected, Chair Orr abstained.*

Chair Orr called for nominations for the position of Vice Chair. **Commissioner Ludwig** also announced he did not want to remain as Vice Chair. **Commissioner Ludwig** nominated and **Commissioner Parker** seconded the nomination

of Commissioner McLaughlin as Vice Chair. *Vote taken; Commissioner McLaughlin was unanimously elected. Commissioner McLaughlin abstained.*

Chair Orr called for public comments. There were none; he declared a recess at 3:00 p.m. and reconvened the open public meeting at 3:15 p.m. Representative Pflug joined the meeting.

7. Petition for Review:

Cascade Food Services, Inc., Shoreline:

Bob Tull - Attorney for the Petitioner, **Neil Gorrell** - Assistant Attorney General, represented Gambling Commission Staff, and **Jerry Ackerman**, Assistant Attorney General, represented the Commissioners.

After hearing testimony from the Petitioner and Assistant Attorney General Gorrell, the Commissioners advised they would render their decision after conducting an executive session.

8. Free Spin / Bullseye Distributing, LLC

Declaratory Order – Request for Continuance:

Pat Riskin-Attorney for the Petitioner, **Michael Lufkin**-Assistant Attorney General represented Gambling Commission Staff, and **Jerry Ackerman**-Assistant Attorney General, represented the Commissioners.

After hearing testimony from the Petitioner and Assistant Attorney General Michael Lufkin, the Commissioners advised they would render their decision after conducting an executive session.

9. Executive Session To Discuss Pending Investigations, Tribal Negotiations & Litigation:

Chair Orr called for an executive session at 5:10 p.m. and recalled the public meeting at 5:25 p.m.

In the matter of the Cascade Food Service Petition, **Chair Orr** announced the Commission elected to remand this issue back to the Administrative Law Judge. A certified transcript of the hearing is on file.

In the matter of the Free Spin / Bullseye Petition, **Commissioner Niemi** made a motion seconded by **Commissioner McLaughlin** that this be referred to an Administrative Law Judge for the taking of sworn testimony, admissible evidence, and the arguments of the parties, on the issue of whether or not the possession and operation within this state under the vending machine—Free Spin Vending Machine/ Bullseye Distributing is prohibited by Washington law, and that upon that conclusion, the Administrative Law Judge shall issue findings, fact and conclusions of law and an initial order, which will be delivered to the Commission consistent with the law. *Vote taken; the motion passed unanimously.* A certified transcript of the hearing is on file.

With no further business, **Chair Orr** adjourned the meeting until 9:30 a.m., June 14, 2002.

**COMMISSION MEETING
FRIDAY, JUNE 14, 2002
DRAFT MINUTES**

Chair Orr called the meeting to order at 9:30 p.m., at Maple Hall located in LaConner, and welcomed the attendees. He announced that Commissioner Parker could not attend and offered his apologies.

MEMBERS PRESENT: **COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER JANICE NIEMI;
SENATOR MARGARITA PRENTICE;
REPRESENTATIVE CHERYL PFLUG;
REPRESENTATIVE ALEX WOOD;**

OTHERS PRESENT: **RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
AMY PATJENS, Manager, Communications & Legal Department
DERRY FRIES, Assistant Director, Licensing Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

10. MINUTES – May 9 and 10, 2002:

Commissioner Ludwig made a motion seconded by Commissioner Niemi to approve the Regular Meeting Minutes of May 9 and 10, 2002, as presented. *Vote taken; the motion passed with four votes.*

11. Staff Report:

Presentation of the 2003-2005 Budget:

Rick Day, Director, announced the budget PowerPoint presentation would be in provided two parts; the 2002-03 Budget Status and the reductions would be addressed first to bring everyone current, and then the proposed 2003-2005 Biennium Budget would be presented. The budget is a proposal at this time in order to enable discussion and consideration for ultimate approval in whatever form the Commission desires at the August meeting. Director Day refocused on the mission of the agency and the Commission's statutory authority. He introduced his budget assistants, Bob Sherwood and Cam Dightman.

Referring to a state map, Director Day gave an overall picture of agency resources and where agent home offices and regional offices are located. He also identified the locations of the Tribal Gaming Unit and the Special Investigations Unit.

Proceeding with his presentation, **Director Day** reminded the Commission that in the present biennium there was a legislative decision to transfer \$2,425,000 from the Gambling Revolving Account. He reported fewer house-banked card

rooms came on-line than originally projected, and at a slower pace. There was also a calculation error in the agency's estimates that impacted revenue projections. Because of those combined events, staff was required to consider alternatives that would reduce the budget immediately. One immediate action was to implement and continue a freeze. However, while it helped lower the bottom line immediately, in the long term, it would not help the agency accomplish what they needed to do. In the end, it might actually cost the agency, because they would have to defer improvements, like technology, that could streamline operations. Other considered alternatives were to eliminate agent positions and other line services. There too, it directly affected the services that the agency would be able to provide in the field, which required a larger number of positions. Another alternative considered was to cut equipment and software system improvements. While the agency would get a one-time benefit from that, it would probably damage long-term efficiency.

Director Day reviewed the decision to place the initial focus on cutting at the management level and preserving the agency's overall ability to do its job. As a result, a freeze was implemented on hiring staff, travel and expenditures, which is still in force through June 30th, despite the fact that the Governor lifted his freeze a couple of months ago. The budget is now balanced and the agency should be able to go forward with managing its resources. As a result of the various reductions, the agency will be cutting a total of 26 positions; six positions have already taken place through a reduction in force (RIF) effective July 1, 2002.

Director Day provided historical background information on the '99-'01 biennium expenditures of \$25 million to the budget that was approved by the Commission in order to arrive at the current biennium of \$30 million. **Commissioner McLaughlin** asked why there were unexpended monies at the end of the biennium. Director Day responded that the biggest chunk of that is due to positions that weren't hired. Commissioner McLaughlin asked if that is where the \$2.4 million transfer of funds came from. Director Day responded that the amount that wasn't spent would go back into the cash balance of the Revolving Fund Account, and that is where the transfer came from. He demonstrated the present biennium's budget fund balance and explained how we got where we are -- identifying the expenses, the revenue, and the fund balance. While it looks bleak, at the time the budget was submitted, the instructions from OFM told the agency not to submit planned fee increases. This demonstrates that for planning purposes, the agency was aware that we had a long-term issue to find solutions to level out expenses and to stabilize the fund balance.

As the agency began the current biennium—2001-2003, the agency had a year of experience regarding the house-banked card rooms. **Director Day** recalled that last biennium's budget was built the year before and it was an estimate without any practical experience on how many card rooms may open and their operating trends. After that first year of experience, the agency had to re-evaluate expenses and revenues to assure they were closely comparable, and adjusted the projections down from the anticipated 100 house-banked card room to 90, which reduced the anticipated revenue. After the last legislative session, there were reductions and adjustments that had to be made through the allotment process, which in part related to inflation factors -- \$716,000 was the value of the one-year COLA increase that was granted by the Legislature -- \$1,000 represented a series of balancing for various revolving accounts that we use, such as the Department of Personnel, and the Attorney General's Office. Then, a decision was made to remove \$125,000 out of the allotment due to a legislative budget note. Director Day noted the agency is going on record in the future to contest that practice -- we don't believe that is in compliance with the law. Director Day also emphasized that the agency is a revenue-based agency, continuing to re-project revenues and caseload growth. If the caseload and the revenue projections were not adequate, the positions would not be funded, even if the Commission provided the authority.

Director Day explained that the agency in effect froze 20 positions going into this biennium. We probably would have been looking at 26 RIFs instead of six had this not taken place some time ago. That resulted in a spending plan of about \$28 million for the biennium. Director Day emphasized the importance of understanding what the agency's revenue expense chart and fund balance would have looked like as we entered this biennium absent any help from the Legislature. He noted that even with fee increases in the out years, there was still a downward trend; however, the agency would have still been able to manage their resources by making gradual adjustments because the fund balance line didn't cross out of line until about 2010 or 2011. That would have provided the Commission a little more planning flexibility as the agency moved forward. He reaffirmed the Commission did approve fee increases for 2001 and passed on a fee increase for charitable organizations in 2002.

In reference to further adjustments for house-banked card rooms, **Director Day** explained that staff noticed the house-banked card room employee model wasn't producing the revenue projected. Staff discovered part of that was due to a

duplicated account. Staff also did not anticipate the number of employees being employed at more than one house-banked card room, which resulted in a fee of \$56 as opposed to \$260, and represented a substantial piece of revenue. The negative has already been balanced with an anticipated fee increase for '03, and even anticipating a fee increase this year, the Commission would be at a \$1.6 million revenue reduction. This required immediate decisions to be made.

Director Day noted that it was also important to consider how staff was trying to balance the budget while also striving to improve agent retention. Some progress has been made and staff hoped retention has been stabilized. Conversely, any savings that would come as a result of the staff turnover would no longer exist.

Director Day pointed out that \$831,000 was initiated immediately in 2003 through savings in long-term expenditures. Even after that, the agency would be looking at a minus decline in its fund balance -- being off balance by \$730,000; caused because of the immediate problem of instituting budgetary contingency plans projected for 2010 to be fast-forwarded to 2002. Director Day noted that with the 20 frozen positions, the six RIFs, the decision not to renew the contract with the Council on Problem Gambling, by managing field operations at a 2.5 percent vacancy level, and by deferring some technology initiatives, it prepared the agency to be a little more streamlined in the years to come. Director Day specifically addressed the internal reduction and reorganization measures taken. He stressed that although the budget is now balanced, it does not mean staff will stop looking for efficiencies or better ways to get the job done. Director Day summarized by saying that various reductions have been implemented, and he reminded the Commission this does include fee increases in successive years for 2003, 2004, and 2005. That recommendation will require more work on revenue projections and an evaluation on how the agency is doing.

Director Day paused for questions before presenting the 2003-2005 Biennium Budget. There were no questions. He pointed out that the agency is ahead of the statewide budget process because of the internal timeline for presentation and Commissioner consideration and approval. The final budget presentation is scheduled for the August Commission meeting. After approval, the budget is submitted to the OFM, and they convey it to the legislative staff.

Director Day explained that revenue estimates are a critical planning tool for the agency. The agency budget is developed from the field and relates to the programs necessary to accomplish the licensing, regulatory and enforcement tasks. There is always the caveat that the budget plans and desires need to be matched with their revenue. Director Day summarized the agency's budget, the revenue, the '03 biennium allotment figure, and the carry-forward figure. The carry-forward figure is calculated -- it is an agreement between OFM, legislative staff and the agency, and it represents the second year's budget (of the existing biennium), times two, allotment times two - minus adjustments (one time expenses). The proposed budget shows a net decrease effectively and staff proposes moving forward in this manner for the biennium, particularly with the continuing budget crisis. He compared the proposed budget to the total revenue available and the bottom line of \$13 to \$14 million, noting the agency is in balance in the final year. He reviewed the details: the slower growth on house-banked card rooms, frozen positions and not adding positions in response to the slower growth, the agency reorganization of duties, the RIF of six positions, ending the Problem Gambling contract, and other cost savings measures. The upside is the anticipated adjustments -- things like lease costs, communication increases, the kinds of things that are more fluid. Another consideration is the potential adjustment of salaries and benefits -- step increases -- and then the full implementation of the new agent salary plan. The important figure he wanted everyone to notice was a decrease of almost \$1.7 million, which compares to the tribal gaming unit increase which also generated revenue at the same time of about a million dollars. He briefly discussed adding a total of eight tribal positions: a licensing tech, additional help for the gaming lab that handles all the approvals of new games for the TLS machines, and six agents, should the growth occur as projected. Director Day provided a visual demonstration of the casinos currently being operated by compacted tribes.

Director Day addressed the self-insurance program and noted the state increase is estimated from \$113 million to \$173 million. Our agency's cost is presently about one-tenth of one percent and we are anticipating that to increase to slightly over one-tenth of one percent.

Director Day explained changes to the electronic gaming lab charges as they relate to tribal billing practices. The agency is now billing out some of the costs of the lab to manufacturers, and, if the lab does work that is outside or is directly related to tribal gaming, then the appropriate entity is being billed for those services. That should reflect a reduction to the amount of the costs that are billed to tribes across the state. Director Day noted an overall decline in ID stamps, in Bingo and pull-tabs.

The estimated Fund Balance in 2004 is projected at approximately \$4.5 million, for both years. This reflects working capital (based on the budget of just a little over three months). **Director Day** noted that for the '03-05 biennium, 69 percent of our revenues come from license fees; and 21 percent from tribal and miscellaneous fees.

Director Day explained how the money is spent, noting that employee based agencies spend about 73-74 percent on salaries and benefits. That is why reductions in equipment or fixed expenses don't have much of a significant long-term impact. He noted that over the years, the agency has added, or projects adding staff, and in addition to the legislative COLA increase approved for 2002 and the agent salary plan -- those expenses have been incorporated in the budget, which explains the increase.

Director Day provided a financial picture of what the Commission regulates. The net gambling receipts reflects approximately \$1.2 billion, and that scale will change as the agency moves forward. This figure represents all Commission regulated gambling receipts and includes lottery and horseracing receipts. The tribal receipts reflect approximately \$420 million and the card room receipts reflect approximately \$200 million. He reiterated that by statute, the agency is required to raise the appropriate number of fees for the entire enforcement of everything that is under the Commission's jurisdiction and related activities to Title 9.46 from license fees. The tribal dollars that are generated are for specific compacted services with the tribe.

Director Day addressed a chart that provided a picture of how our licensed gambling activities compare; the steeper increases of the card room industry, the punchboard/pull-tab activity, Bingo, amusement games and raffle trends. In the end, after all the various tribal positions and new revenue projections, the chart is intended to demonstrate where we should be with the approval of the new budget the Commission will consider in August. Staff anticipates the revenue and expenditure line to be in balance, and the fund balance should be very close to the three-month agency operations level. **Director Day** noted the Commission expends approximately \$1.2 million each month. Essentially, a fund balance is required for the operation of the agency. **Director Day** emphasized that staff addressed the current budget consideration and the reductions, tough decisions were made, we've reacted to the decisions, made the reductions we had to, and now we're going about doing our job.

Chair Orr called for a recess at 10:35 a.m. and reconvened the meeting at 10:45 a.m.

12. Staff Report:

Commission - Expanded Law Enforcement Authority:

Bob Berg, Deputy Director, presented a legislative proposal for Commission consideration pertaining to providing criminal arrest authority to Special Agents when a crime is committed in their presence. He noted the Commission was established under RCW 9.46.210 in 1973. Special agents of the Commission are limited authority law enforcement officers given authority by the statute to enforce all provisions of 9.46 and any other penal laws of the state of Washington relative to gambling.

Mr. Berg noted the nature of gambling has changed dramatically in the state since 1973. Some of the bigger events were in 1988 when the Indian Gaming Regulatory Act (NIGRA) was enacted and the tribal casinos emerged as a result, along with changes in social activities and Reno Nights being authorized. This culminated with the passage of legislation in 1995 or 1996 that authorized house-banked card rooms. RCW 9.46 is designed to be enforced in partnership with local law enforcement—the Gambling Commission receives no tax revenue from gambling activities in the state of Washington. The Legislature has determined that money should go to local government for joint enforcement of the Act. As a practical matter, Gambling Commission special agents find themselves doing the majority of the enforcement of 9.46 because of technical expertise and other demands on local law enforcement.

There are several other state limited authority law enforcement agencies. The state of Washington likes to empower citizens to a great degree with initiatives and referendums that limit government. One of the ways they've chosen to do that is by having limited authority law enforcement agencies. **Mr. Berg** noted that about seven months ago, when the agency conducted a review of its Firearms Use of Force and Law Enforcement Training Program, a survey of 22 other states revealed that of those 22 states, 20 of the gambling enforcement regulatory agencies were general enforcement authority agencies, limited only by policy in terms of their law enforcement authority, not by statute. Such is not the case in Washington where the Gambling Commission joins such agencies as the Department of Natural Resources, who has a law enforcement services division comprising approximately 17 enforcement officers that patrol DNR land

throughout the state; Social and Health Services; the Lottery Commission; and the Parks and Recreation Commission, which as of last September, armed their enforcement officers partially because of an incident that occurred in Oregon where a Parks Services officer was killed. The Utilities and Transportation Commission is also a limited enforcement agency, as is the Liquor Control Board and the Department of Corrections. All these agencies have one thing in common, for purposes of enforcing the chapters for which they have been empowered to provide enforcement, they have the full authority of the state of Washington—they are just limited in their scope to those statutes.

The Department of Fish and Wildlife was also a limited enforcement authority agency until the last session of the Legislature when, with the concurrence of the Governor and the Legislature, they were transitioned from a limited enforcement authority agency to a general law enforcement agency—which is identical to the Washington State Patrol in terms of their enforcement authority. There were two reasons for that: because the agency direction had changed and because prior to that, the Department of Fish and Wildlife had language in their statute that allowed them to take criminal arrest authority when crimes were committed in their presence. This is basically the backdrop of how the agency's legislative request began and where staff would like to see it go. Washington State Gambling Commission special agents are absolutely law enforcement officers when on duty and enforcing RCW 9.46. They are absolutely not a law enforcement officer when off duty or not enforcing 9.46. This is very confusing in the real world in which the Commission's agents work—it creates training problems and it has created operational problems.

The agency concerns deal with two things. The first concern deals with field agents who happen to be in an establishment such as a card room, Bingo hall, or a tavern with punchboard/pull-tab operations and other crimes take place that are outside of 9.46. The second concern deals with agents (specifically in our Special Investigations Unit) who are currently working with state and federal law enforcement agencies, task force situations, and dealing with the crimes that are believed to be associated with 9.46—illegal sports betting, drug sales, prostitution, money laundering, and loan sharking. Agents come across these situations in two different environments: the environment which the identified field agents work, and the environment which the Commission's unidentified undercover special investigations people work. **Mr. Berg** pointed out that over the last four years, Commission agents have been in three establishments when armed robberies have occurred. They also have been in establishments where other arrests have been made and other crimes have been committed in their presence, sometimes alone and sometimes with local law enforcement. It is not a hypothetical problem; it is a real problem and the issues and perceptions that staff deal with are expectations to act on the part of Commission agents by the licensees, the public, and local law enforcement. The nuances of being a limited law enforcement agency are somewhat lost when one talks to local law enforcement officers who attend the same training academies as Commission agents do, and who go through the same regiment of training, and who also deal with them on various types of joint investigations. The perceptions of the Commission's licensees in terms of what they view the agents' authority and the public at large. Training issues are also involved as to how agents are trained when they attend the basic law enforcement academy as well as in-service training that's offered by the agency's own instructional team in terms of "when am I a police officer or law enforcement officer and when am I not, and, what do I do when something occurs in front of me."

As part of the review last year, staff went through agency records and asked for anecdotal information from the agents as to times when they had come across situations where they either hesitated and did not act, or acted but maybe they shouldn't have, or didn't act at all. Staff found everything from assists to WSP and wrestling people. Management has some concerns in terms of agent safety — if they hesitate to act because they are unsure of their authority, they may be placed in harm's way. Agents are also involved in task forces where they work together at the local level. They have worked jointly with Everett, the State Patrol, the FBI, the Treasury Department as well as several other agencies. Recently, Director Day received an asset-sharing check from the FBI as a result of a joint investigation with Spokane authorities and the FBI. It led to the arrest of several people and had ties back to New Jersey organized crime.

Commissioner Niemi asked, when our agents work with other law enforcement agencies, are they sworn in as law enforcement officers. **Director Day** explained that when Commission agents work with the Federal Government because of certain aspects of the federal law relative to wiretapping and the authority to listen to wiretaps, the agents are sworn in, normally as Deputy United States Marshals. They then have the authority to review the information and to assist the FBI. When they work with local law enforcement, they act on the authority of the Commission as special agents authorized to enforce 9.46. One of the issues that came up in the analysis was whether or not to pursue cross-deputization or cross commissioning with all the jurisdictions we work with. That has some practical implications as a

statewide law enforcement agency because agents move around the state. However, the agency does not pursue that with local enforcement; they do with federal agencies.

Mr. Berg explained the legislation that staff is bringing forward is similar to the legislation that the Department of Fish and Wildlife enjoyed prior to becoming a general law enforcement agency. Specifically, if the officer was acting on duty and within the scope of his employment and a violation of the criminal law occurred in their presence, the officer had the authority to act. That same proposal is what is before the Gambling Commission and all three conditions must be present: 1) the agent must be on duty and acting within the scope of his/her authority; 2) a violation of the criminal law occurs in their presence; and, 3) the agent has completed a course of law enforcement training approved by the Criminal Justice Training Commission. The agent's authority to act as a general enforcement authority in that case would be limited only to those kinds of situations. He affirmed that all of the Commission's agents attend the Washington State Criminal Justice Commission's basic academy with some exceptions. That is an 18-week academy of 720 hours of certified law enforcement training. It is exactly the same academy attended by local police and sheriff's deputies and officers of the State Fish and Wildlife Commission. Our special agents normally attend after nine months of employment. The agency has some people who have worked for the State Patrol and other law enforcement agencies and, therefore, they had previous law enforcement academy training which the Training Commission and this agency recognizes. There are some special agents in the Financial Investigation Unit who are hired specifically for the accounting, auditing, and other kinds of expertise. Those agents are not issued firearms and work out of the headquarters environment most of the time.

Mr. Berg reviewed some of the concerns received regarding this legislation. Mr. Berg reported that he sits on the Washington Association of Sheriffs and Police Chiefs (WASPC) Legislative Committee. The committee, in general, is supportive, individually; however, due to some unforeseen circumstances, the June 8th meeting was postponed to July. This item will be on the WASPC agenda, and he anticipated a strong endorsement for this legislative proposal.

A second concern was what would local prosecutors feel about this legislation. **Mr. Berg** reported that he has been in contact with Tom McBride, Executive Director, Washington Association of Prosecutors (WAPA). The position of WAPA is that they will go with WASPC. It is more of a law enforcement issue in their minds than a prosecutorial issue, and if WASPC supports this, WAPA will as well. In talking to the representatives of the Governor's Office, there was a concern about the possible loss of regulatory and enforcement focus—they asked if the Commission's special agents would be looking for things to do other than gambling work. He advised that if agents started doing that, they would be looking for other work. It is believed that through hearings and through the process of discussion with the Legislature, it will be necessary to address concerns they might have in that regard. There also may be some retirement system issues. In talking to people at the Department of Retirement Systems, as well as talking to others in the Legislature, and Commission Ex Officios, membership in LEOFF is not dependent at all on whether the agency is a limited or general enforcement authority; it's dependent upon the Legislature passing a statute that says this class of employees will be in the law enforcement system.

Mr. Berg indicated there is a significant issue that has to do with liability and whether this exposes the agency to more liability, less liability, the same liability, or different liability. He gave a hypothetical anecdote. A robbery occurring at a house-banked card room and an agent is on the premises. The agent properly acts in terms of their training not to endanger citizens, but decides to follow the suspect to the parking lot and something happens—a weapon is discharged and a third party is injured, something of that nature. Would the Commission be liable? He affirmed there would be issues of whether the agent was acting within the scope of their employment or not. If this legislation were in place, the agent would be acting within the scope of his/her employment. However, he believed the Gambling Commission would get sued either way. After listening to all of the individual points of view, he believed that liability attaches to the actions of special agents whether or not this legislation is passed, however, he deferred to Assistant Attorney General Jerry Ackerman on the levels of liability.

The final issue to address deals with training and practical experience issues. When the agents go through the same 18-week training period as local law enforcement, they learn certain skills, and skills are reinforced throughout their career. They receive 80 hours per year: 40 hours are career development and 40 hours are use of force training. They qualify with their firearms at least twice a year, they participate in other tactical exercises and firearms, and they have video training throughout the year over those 40 hours. They don't have ongoing experience on crisis intervention, whereas, a local police officer goes to the academy, and, everyday they go to work they're dealing with all of the elements on which

they've been trained at the academy. It is different with Commission agents who do not deal with all of those elements they were trained on in the academy on a day-to-day basis. What Mr. Ackerman and what WASPC have talked about is, if an agent acts under the authority given by this proposed legislation, the training that they get would be subject to a high level of scrutiny because of not having the ongoing practical experience on everyone of these things that might happen in the presence of the agent. Staff did some analysis of their use of force training program and determined it meets or exceeds every other agency polled in terms of clock hours provided to Commission agents. The Commission's use of force training is comparable to the State Patrol and Seattle Police Department. .

Mr. Berg identified the interested stakeholders: the Washington Association of Sheriffs and Police Chiefs, the Washington Association of Prosecuting Attorneys, the Washington Council of Police and Sheriffs (labor side), and WASPC (management side). WACOPS has already offered their firm endorsement and will follow that up with a letter regarding this legislation. He anticipated that WASPC and WAPA would take an affirmative stance on this proposed legislation at their July meeting. He advised that he contacted the Association of Washington Cities, Washington State Association of Counties, and the Washington Association of County Officials, who will be getting back to him. They have also indicated that they would defer more to WASPC and WAPA as their experts in these kinds of issues.

Mr. Berg advised that he recently talked to the Washington State Criminal Justice Training Commission, and although the Training Commission would not take a position to support this kind of legislation, they indicated they would be able to testify that Commission agents are consistent attendees of the academy in the training that they do receive, and further, that in the last two years, three of the Commission's agents have received the top award for attendance at the academy. Gambling Commission agents are required to have a bachelor's degree. This sets them up well in preparing for the coursework at the academy. A great deal of selective screening takes place, and they are required to do all the things that law enforcement agencies do, including psychological polygraphs. They work in the agency up to nine months before being sent to training, so they are acclimated to the work the Commission wants them to do.

Mr. Berg reported the proposed timeline for this legislation begins today, June 14th with this presentation. Staff will return to the August 9th meeting to make a formal request to submit this proposal to the Governor's Office. The deadline for submitting to the Governor's Office is the end of September.

Discussion and questions were generated regarding decisions and actions taken to support another police officer and the potential for being called to testify in court. **Mr. Berg** affirmed there might be situations where Commission agents would be put in a position of having to decide whether or not to act to support another police officer. However, the Director has also made it very clear that the application of this authority is to be limited and rare. It's designed to protect the agent and allow the agent to protect others as opposed to expanding their authority.

Commissioner Niemi commented that all of the different agencies she has talked to have indicated that if the sheriffs want to do this, it's all right, rather than saying, yes, we certainly need this. She believed that the prosecutors really don't care, but that doesn't mean they're going to bring the cases forward. She expressed concern relating to risk management, and she personally didn't see another reason to give people expanded authority. She believed it's perfectly reasonable that any agent in the course of their duty has enough authority to arrest or to deal with the situation. Commissioner Niemi stated that her feeling, at this time, about whether the agent should follow the perpetrator outside and chase them down the street -- maybe they can do that as a citizen, but not with expanded authority.

Representative Pflug asked how many agents there were currently and if they were armed in the course of their duty. **Mr. Berg** replied that there are 89 and they are required to carry their firearms because the Commission has a mandatory carry policy. Commissioner Pflug echoed Commissioner Niemi's concerns about some of the risk management aspects, stating it is not just about training; it's about practical competency. She emphasized that she had concerns about folks who are not doing this all day, every day, and then suddenly thinking that they have an obligation to assist. Representative Pflug asked whether the Commission has an implied obligation to assist. **Jerry Ackerman**, Assistant Attorney General, said the short answer to whether there is a legal duty to assist, is no. That pertains not just to the Gambling Commission, but to any police officer in this state. Legally, there's the Public Duty Doctrine, which basically says that an officer's duty is to the public as a whole and not to any particular individual. There is no compulsion to act in any given case; therefore, even though they are someplace where a crime occurs, they could choose not to intervene, and there would be no liability running to the state if that is all that occurred. Mr. Ackerman said that it is important to remember what is being talked about here is not just short of generally commissioning the Gambling Commission's

agents to act with regard to non-gambling-type crimes. A threshold to exercising expanded authority, should the Commission choose to give it to them, would be that they must be acting properly within the scope of their duties with regard to the gambling chapter. In other words, the agents are where they are, and they're doing what they're doing because they are there to enforce RCW 9.46, the gambling chapter. The second threshold to exercising general criminal authority is that whatever non-gambling crime is occurring, it's occurring in their presence—they can see it; it's something they're able to physically observe. If they're not acting to enforce gambling laws and the crime isn't occurring in their presence, then this does not expand their authority. They couldn't take a report from a citizen and decide they were going to take the place of a local sheriff or police officer and intervene. For example; when an agent is in an establishment, they're doing an inspection or doing some other activity that's appropriate under RCW 9.46, and another non-gambling crime occurs in their presence -- the proposed legislation clarifies that they have the authority to intervene, and they would be acting under a general law enforcement authority rather than acting as citizens. If the incident was an assault, a robbery, or a theft, and they intervened today, they would do so as private citizens. They would have the same authority anyone else in this room would have, and they would be subject to the same liabilities that anyone else would be subject to for the non-gambling-related crime.

Representative Pflug said her observation would be that the agents may already be having difficulty choosing not to intervene, and it seemed like this would not increase the likelihood that anyone would choose not to intervene, but it might increase the Commission's risk exposure. **Mr. Ackerman** responded to Representative Pflug's belief that this wouldn't encourage agents to get into more of these types of activities. He believed there is a necessary second step taking place—one is, giving the agents the legal authority to intervene in non-gambling-type crimes that occur in their presence while they're doing their duties. The second step is a policy that the Commission could choose to put into place with the help of Director Day, or to give the agents guidance as to when they are permitted to intervene. The first step is to give the authority; the second step is to say they have the authority, but they may not exercise it except in defined situations. Mr. Ackerman emphasized that he was not advocating for or against this issue, this is a policy call for the Commission.

Representative Pflug questioned whether the basic law enforcement agency training academy involved the same number of hours for Commission agents. **Deputy Director Berg** responded that it is the same academy with the same number of hours for essential training as police and sheriff's. He clarified that the Commission already has a policy that Gambling Commission agents are not allowed to carry their firearms off-duty. They have no authority off-duty; this would not change that—in fact the policy is very specific that if an agent chooses to carry a firearm off-duty, it must be their personal firearm and must be carried with the benefit of a concealed weapons permit, not agency credentials.

Commissioner Niemi said that wasn't a big concern of hers, and asked if agents carried telephones. **Deputy Director Berg** affirmed. Commissioner Niemi said she would imagine that one of the common things that might happen in their presence is some kind of drug transaction. She asked what would be wrong with the agent calling the local police authority and having the local authority conducting the arrest. **Director Day** affirmed this is something the agency has contemplated very seriously. From his perspective, the issue is that if the agents enter an establishment, and if they're faced with a situation, he personally believed it's their responsibility—they should make a decision based on aspect. Agents are provided training on when and when not to intervene. Currently, it is not proper procedure as a plainclothes officer to go into an establishment and get involved in a drug bust. That would be in violation of the agent training and that isn't going to change. Director Day's concern related to when an agent is faced with an on-scene situation that threatens them, an individual, or the public—they should be able to fall back decisively on what is the best course of action from their training. They shouldn't have to doubt the process of whether they are a private citizen, or whether they have the authority. It should be a very clear decision based on the proper procedures for a law enforcement officer. Director Day affirmed this is a controversial topic, and stressed our agents and our agency is here for gambling enforcement and activities related to that, and the legislative proposal was submitted for consideration to clarify authority in the proper situations. Director Day believed clarity was critical and appropriate.

Chair Orr believed the need to expand training and the agents' ability to provide the protection and to give the perception of protection to the citizen is legitimate. Everyone acknowledges there are inherent problems; however, his opinion differed with Commissioner Niemi regarding the 911 system when observing an accident, an injury, or a crime being committed. Six people with cell phones aren't going to stop the action. Chair Orr stated he was somewhat supportive of what staff is trying to do; however, they need to work through the details. Chair Orr believed it would not be a bad idea to improve the protection of the citizens of the state. **Commissioner Niemi** agreed with some of the things

Chair Orr stated. She understood the complications associated with cases that flip from one authority to another. She also understood the issue about training. Agents have got to know probable cause, and have to be trained. Commissioner Niemi believed there was a difference in training—and she didn't object to expanding training. She asked if this really is the answer—to be able to make an arrest for something other than a 9.46 violation during the course of an agent's duty.

Commissioner McLaughlin commented that no one has mentioned the security people in these establishments, and she questioned their responsibility and rights. **Mr. Berg** responded that they are employed as private individuals of an establishment, and they tend many times to focus on house-banked card rooms; however, they are 71 of hundreds of licensees in the state. He said most of them are run in a manner that is probably better than many of the other places agents are required to visit. Commissioner McLaughlin acknowledged all the licensed places, and she was certain that the Bingo facilities have some security, and if they didn't, they must not think it's needed.

Commissioner Ludwig pointed out that agents would have the rights of a citizen to make an arrest and he didn't think that's been clarified. A citizen can make an arrest for a felony or misdemeanor, which is also a breach of the peace that is committed in their presence. **Mr. Berg** believed that could be enough if they trained to that level, but that is not the training the Commission gives their agents. If they start to train agents affirming they can intervene as a citizen, he thought that gets the Commission in the same place legally that they would be at if they had the authority. The agent would then say they were acting as a citizen, but the agency told them they could do this. Deputy Director Berg thought this would be a legal issue. **Mr. Ackerman** said the citizen arrest power is very murky under Washington law. Mr. Ackerman said citizen arrests seem to be upheld only in situations relating to serious felonies, where either the arrestors' life is in danger or a third party's life is in danger, but to the extent that one is out there trying to intervene in crimes that don't impose an immediate threat of death or serious bodily harm, that authority is very questionable. Commissioner Ludwig said he understood the perils involved.

Representative Pflug said the Commission/agency's liability is not a non-issue; however, she believed the overriding interest is protecting the public. Private security personnel essentially are not cops for hire and the Legislature in Washington has had a very strong emphasis on not allowing that. Establishments can hire security, but they are not law enforcement, and there are some real important reasons for that—to protect the interests of the people who hire them, and not necessarily the public safety. Representative Pflug hoped that if the Commission is going to take a position on the proposed legislation, that there be a very thorough discussion on whether or not this really does provide any increased protection to the public. The discussion should encompass whether or not there is any increased risk to the public by at least implying that folks should be doing more than they might be trained to do. She expressed some confusion on whether or not the agents were already trained to do this or whether or not we need to train to that level, and she expressed her desire to see the fiscal note. Representative Pflug noted that under the category of what the practical benefit is, unless an arrest is stopping something that is currently a threat to someone's physical well being, an arrest is not conviction. It seemed to her, that if it does not result in a conviction, unless the agent actually prevented harm at that instant, they may not in fact be adding a lot to the public benefit—when what we really wanted was a conviction that's going to stop that activity or get those folks off the street. She emphasized that whether or not the prosecutors are going to handle this, or whether or not we're going down the road that's going to get us to conviction, was pretty important.

Director Day emphasized this proposal would not move forward without the Commission's discussion and concurrence. He reported that Deputy Director Berg unveiled the information to generate discussion. The timeline for approval, or not, relates to the budget proposals due next month. He asked the Commission to ponder the discussion, noting the agent is a part of the protection of the public being discussed, and their decision-making process when they come upon a crime is whether to intervene in this crime as a private citizen; or on the other side of the equation, do they intervene as a duly-authorized law enforcement officers with full authority of the state of Washington. Director Day asked each individual Commissioner how they would make that decision. Director Day promised further opportunities for discussion at the next meeting.

Deputy Director Berg addressed two final items in specific response to issues raised. One of the issues was raised by Commissioner Niemi, which is that the agency already deals with the cases they handle under 9.46. He acknowledged there are 39 duly elected prosecutors in this state, and staff has found that their willingness to take cases varies from county to county. In response to Representative Pflug's comment on the training issue, he said it is true our agency

trains differently, but there is no fiscal impact because the time spent on training agents on how not to intervene because of what the law says, would be redirected to proper methods to intervene.

RULE UP FOR DISCUSSION

13. Petition for Rule Change from Sherry Gillard – Employees and Owners Showing Poker Hands:

WAC 230-40-610:

Cally Cass-Healy, Assistant Director, addressed the proposed amendment for player-supported jackpots. She explained this was a petition submitted by Sherry Gillard, who would like to loosen up the requirements for owners and on-duty employees to turn their hand over at the end of a game, and she offered amending language to require that only in the cases where a bad beat jackpot or a qualifying hand occurs.

Senator Prentice asked about the history of the requirement to show the hand and where that come from. **Ms. Cass-Healy** said staff had at least one case and there were two specific circumstances where an owner threw away their hand knowing that there was a qualifying bad beat, and they could preserve the large player-supported jackpot to attract more players to the game. The Commission considered that fraud on the players, and therefore the public, and wanted to preclude that activity. Ms. Cass-Healy affirmed the petitioner felt that this would go far toward solving both the Commission's issue and the licensee's issue if they only had to turn their cards over when there is a potential for a qualifying hand.

Commissioner McLaughlin verified the owner does not get to collect the PSJ. **Ms. Cass-Healy** affirmed, however, she noted the owner could collect the pot—the pot that they're playing for in that hand. Commissioner McLaughlin asked for the definition of a "bad beat" and Ms. Cass-Healy explained. Ultimately, the theory is that if it is such a good hand, that if somebody beats you, you deserve something anyway. **Director Day** explained that staff thought about this as they were reconsidering the petition because they thought there had been an example of a particular violation or two violations. The result is the agency enacted a rule and staff questioned if that was an appropriate reaction because it impacts the entire play of the game and the businesses. Staff believed if this occurs, there needed to be a method to handle it and a mechanism to enforce a penalty under the statute. He explained that staff agreed that the rule should be scaled back to deal specifically with the on duty employees and the owners in the bad beat situation, and not impact the rest of the game. The discussion has been how to do that; however, staff's recommendation is to preserve the rule because the practice is effectively a fraud, and simultaneously, the intent is not to interfere with the actual game itself and tradition.

Ms. Cass-Healy affirmed staff recommends further discussion.

RULES UP FOR DISCUSSION AND POSSIBLE FILING

14. Background and Fingerprint Legislation:

WAC 230-04-180:

Amy Patjens, Manager, reported this rule is up for filing. Last session Senate Bill 6491 was passed to clarify the Commission's authority to send fingerprints through the federal criminal history system. The new law required the Commission to pass rules to identify which applicants would be subject to these, and the law says that the Commission will take into consideration the nature, scope, size, and character of the license being applied for when making these rules. Staff wanted this provision because they did not want to be required to run fingerprints on what they would call low level, low risk applicants. This rule implements the legislation and sets forth by rule who the Commission will get fingerprints from and run the subsequent federal checks. She said there are two things that are really important: one is Section 2, which allows the Commission to require these from any other person--if we are doing an investigation and we feel there is a need to run fingerprints, we still have the right to do that. The second important thing is to make the distinction between running a criminal check using the basic computer system as opposed to actually getting fingerprints. The agency will still continue to get background information from applicants and run that process. The fingerprint catch is that it actually confirms the identity of the person. Staff recommends filing for further discussion.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to file the rule. *Vote taken; the motion passed unanimously.*

15. Bingo Legislation:

Rules necessary to implement the 2002 Bingo Legislation: WAC 230-30-002; WAC 230-04-202; WAC 230--5-315; WAC 230-12-090; 230-30-104; WAC 230-20-170; WAC 230-50-010:

Cally Cass-Healy, Assistant Director, explained that during the 2002 legislation, the rule was amended at the request of the Bingo licensees. The purpose of the law was to allow charitable and nonprofit organizations to join together to save dollars on operating expenses and therefore have more dollars to apply for their stated purposes. The law allows three things. It allows Bingo licensees to operate Bingo games seven days a week; it allows a Bingo house to share a facility and operate up to seven days a week in such a facility; and it also requires Bingo licensees which operate in a facility that offer Bingo more than three days a week to include language in all promotions and advertising warning patrons that gambling can result in emotional and financial harm. Since the bill passed, staff has had five separate meetings with Bingo licensees to gather their input and ideas regarding the legislative changes. They've also had many discussions internally with the rules team and the management of the agency, and it was also discussed at yesterday's study session. This package is divided into two sections. Rules Package 15A includes the minimal rules staff feels would be required to implement the legislation, and Package 15B has been included for the Commission's review at the request of the licensees.

PACKAGE 15A

PACKAGE 15A(a) 230-20-002 – NEW SECTION – share facilities for Bingo licensees with separate management. This rule sets forth the requirements Bingo licensees must follow when sharing a facility and managing their own Bingo game. The requirements are: 1) a written notification to share facilities must be made to the Director at least 30 days prior to operating in the shared facility. It must include the name of all organizations sharing the facility, the names and signatures of the highest-ranking officer for each organization involved, copies of any written agreements between the organizations, and the method by which the expenses will be shared. The other requirements include each Bingo licensee sharing the facility to maintain management over its own Bingo game, each licensee to be solely responsible for its individual records, inventory, management, equipment and operation of the gambling activity. Each licensee must complete a separate quarterly activity report and maintain cash flow requirements, and each licensee's head officer or principle location must be located in the same county where the Bingo game will be operated. That is a specific RCW requirement.

ITEM 15A(b) 230-04-202 – reflects the fee changes that will be needed to implement the seven-days-a-week operation. A growth in gross gambling receipts is anticipated for charitable and nonprofit organizations which choose to increase operation from three to seven days a week. Therefore staff proposed license classes to account for the anticipated higher-gross gambling receipts. This amendment adds Class N through X for Bingo licensees and Classes P through V for punchboard/pull-tab licensees. In addition, there is a handwritten copy of a rule for the commercial stimulant punchboard/pull-tab licensees. Staff is recommending putting that on the record for filing so they can keep their punchboard/pull-tab fees consistent amongst both the nonprofit and the commercial licensees.

Ms. Cass-Healy added that discussion came up in the study sessions and there were some concerns on how this would impact licensees who wish to continue at three days a week but would end up above Class N. Staff will continue to discuss that issue and possibly come back with different options.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** that Item 15A and B be filed for further discussion, thus maintaining the Commission's options and avoiding any delay in implementation.

ITEM 15A(c) 230-04-315 - Change of schedule. Staff is recommending a repealer. Staff believes this rule is no longer needed since Bingo games will be offered seven days a week and each agent knows their area, so they don't need to be notified every time a Bingo game changes times.

ITEM 15A(d) 230-12-090 - Allows the Commission to implement the requirements under the RCW for the advertising of the Council on Problem Gambling and it adds language in Subsection 2 that is very specific to what the RCW says: "All bingo licensees who operate in a premises where bingo is conducted more than three occasions per week shall conspicuously include the following statement and any advertising or promotion of gambling activities conducted by the licensee." **Ms. Cass-Healy** noted there were some housekeeping changes and the penalty for not posting the sign was removed. This is the only rule that actually had a penalty in the rule and staff didn't feel that was consistent.

ITEM 15A(e) 230-20-104 - Cash register method of receipting Bingo income. This amendment sets forth the record keeping under NEW SECTION 5 that needs to take place when Bingo licensees share a cash register. It requires a log be maintained, which documents for each use of the cash register, the name of the organization using the register, the name and signature of the cashier, the beginning and ending transaction numbers, the date, and the beginning and ending times of the session.

ITEM 15A(f) 230-20-170 – Bingo operation, time and use of premises limitations. This removes the operations limit for three days a week and it changes the language to provide consistency between the card room hour requirements and the Bingo hour requirements.

ITEM 15A(g) 230-50-010 – Allows Bingo operators the opportunity for an adjudicated proceeding in the event the request for extended hours under the previous section is denied or revoked.

PACKAGE 15B

Shared Management Rules - Requested by the Bingo industry:

WAC 230-20-005; WAC 230-20-070:

ITEM 15B(a) 230-20-005 – Shared management and facilities for Bingo licensees with shared allocation of revenues and expenses. This rule allows Bingo licensees to join together to share a facility and the management of the Bingo games and sets forth the requirements to do so. They are very similar to the other requirements; however, it also requires additional ways to account for the expenses and the revenue sharing, and the record keeping.

ITEM 15B(b) 230-20-070 - Regulation of managers, operators and other employees. Currently, the rules do not allow Bingo managers to manage more than one Bingo operation. This amendment allows Bingo managers to manage both Bingo operations within a shared Bingo facility without approval of the Commission and local law enforcement. Some housekeeping changes were made to the titles.

Chair Orr called for comments or questions. **Steve Strand**, WCCGA, thanked the Commission staff for the timely and swift creation of this package to pursue the implementation of the bill in question. He advised the licensees are looking forward to working with it and fine tuning the end product, but they urge the Commission to file this rule for consideration.

Earnestine Farenness Primary Manager, Seattle Jaycee Bingo, Seattle asked for special consideration of a proposal that was submitted to the rules team. She asked staff to hold off for a bit in order to give them an opportunity to get more information in. **Ms. Cass-Healy** explained the proposal that came forward arrived after the proposal was submitted. The particular concern in this case was that some Bingo halls are tied into a lease. They don't own their hall and they're tied into a lease specifically for three days, which limits their ability to move to seven days. The proposal was that they would be allowed to go to a second facility for the remainder of their time. Staff did not have adequate time to consider the proposal for this particular package.

Commissioner McLaughlin asked if this proposal would mean a constant transfer of equipment. **Ms. Cass-Healy** affirmed that would be part of the question. There were no further questions or comments.

Vote taken; the motion passed unanimously.

16. Other Business/General Discussion/Comments from the Public.

Chair Orr called for public comments.

Mr. Doug Boone, General Manager, Nisqually Red Wing Casino, commented on Item #12 that was brought forward earlier in the staff report regarding Commission expanded law enforcement authority. Speaking on behalf of the Nisqually Tribe, he expressed concerns they wanted staff to look at in regard to this issue. He believed this legislation changes the scope and nature of their compact with the state of Washington, and that would have to be reviewed, or certain things would have to be looked at.

Mr. Boone also expressed concerns as a private citizen. He noted he that he has been in this industry for quite a while, and the expanded law enforcement hasn't been needed in the last 11 years. Testimony has been provided that we have had an increase of gambling activities, especially in the last few years with the expanded properties at Indian reservations. He acknowledged there has been an expansion of gambling, but as expressed earlier, the card room issue is not something that would propagate the expanded law enforcement need because those facilities, as Mr. Berg pointed out, are very well run, they are very well taken care of, and there are not a lot of law enforcement issues in those facilities. We also know the same thing about Indian Reservations -- as far as Indian casinos are run. Typically they operate just like a card room, with even more regulation than card rooms. He questioned why the Commission is seeking this change right now. He did not see the reason for this change, and noted that it concerned him as a private citizen. All of a sudden, within the last few months or a year, this issue is rising, and it appears there are going to be changes to the scope and nature of where the Washington State Gambling Commission and the Tribal Gaming Commission are headed.

Commissioner Ludwig asked what the tribal gaming agents have by way of law enforcement authority right now, at his facility. **Mr. Boone** responded that as far as law enforcement authority is concerned, they have even more limited authority than Commission agents. They have the authority to investigate criminal activities. They have the authority to print that information, but they have no arresting authorities, they're not authorized to carry firearms and in order to have any of those things happen, they have to contact and involve the proper authorities such as the Thurston County Sheriff's Department, federal authorities as needed, Washington State Gambling Commission staff and the Nisqually Police Department.

Jerry Ackerman, Assistant Attorney General commented on the jurisdictional issue noting that what is proposed currently would not alter the Gambling Commission's agent's or any other law enforcement officer's authority to take action on tribal lands that they cannot currently take. It does not expand their ability to make arrests or engage in other investigatory endeavors on tribal lands. There were no further comments.

Senator Prentice shared an editorial in her local paper, *South County Journal*, addressing the adoption of Commission rules on Bingo. The part that she really liked, and the reason she brought it up was that they made it clear that there is no evidence of sleazy operators here (thanks to the Gambling Commission) and they particularly applauded Director Day for his cautious approach on the Bingo rules. She noted that it is kind of rare that the Commission gets good coverage in an editorial, and it surprised her, and she wanted to share the information and congratulate the Commission.

17. Adjournment:

With no further business, Chair Orr adjourned the meeting at 12:20 a.m. The next meeting is scheduled for August 8 and 9, 2002, in Ocean Shores.

Minutes submitted by,

Shirley Corbett
Executive Assistant